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Pilot Travel Center Workers Get Collective Cert. In Pay Row

By **Jeff Zalesin**

Law360, New York (June 17, 2015, 4:36 PM ET) -- A nationwide class of Pilot Corp. restaurant and retail employees, possibly numbering more than 82,000, won conditional collective status Tuesday in a federal suit accusing the travel center company of manipulating time records to conceal off-the-clock work.

U.S. District Judge Sheryl H. Lipman of the Western District of Tennessee ruled that hourly cashiers, team leaders and shift leaders who worked at Pilot's travel centers around the country from April 2011 to April 2014 qualify for conditional certification under the Fair Labor Standards Act since the nine current plaintiffs all claim they worked extra hours that their managers covered up, resulting in unpaid overtime.

Despite Pilot's argument that its restaurant and retail employees do not belong in the same class, Judge Lipman found that the two groups are united by the wage-and-hour violations they allegedly suffered.

"Plaintiffs' affidavits reveal that the alleged wrongs they complained of were the same no matter the capacity in which they worked or the state in which they were employed," she wrote. "In short, these plaintiffs are similarly situated."

In reaching her decision, the judge applied a "lenient" analysis that she described as the default standard for employees seeking conditional certification in a collective action. She refused Pilot's request to apply a more stringent "hybrid standard" that some judges have used to decide conditional certification motions in cases where significant discovery has already occurred, saying not enough discovery has taken place in this suit.

The plaintiffs will have a heavier burden to carry if Pilot moves to decertify the class later in the case, the judge said.

She also rejected Pilot's contention that granting conditional certification would create an unmanageably large class. A class of 82,000 or more would be cumbersome, she said, but that number will likely be reduced if some potential plaintiffs do not opt in, or if some are excluded by a later court ruling.

In any event, the judge said, "the rationale behind class certification" in general supported the plaintiffs' motion in this case.

"A collective action can save individual litigants resources because those impacted by the allegedly unlawful policies do not have to file individual lawsuits," she wrote.

Judge Lipman refused, however, to include employees other than hourly cashiers, team leaders and shift leaders in the class, finding the plaintiffs failed to show employees in

other positions were similarly situated.

Lead plaintiff Arvion Taylor filed her complaint in April 2014, alleging that during her time working for a Subway restaurant in a Tennessee Pilot location, her manager made her work before and after her shift and during her lunch break. She claimed that her manager altered her electronic time sheets to make it look like she worked less than she did.

Keith M. Stern, an attorney representing the plaintiffs, told Law360 on Wednesday that his clients believe that such tinkering with employees' records was caused by a nationwide Pilot policy requiring managers to audit time sheets before submitting them to payroll. He praised the judge for allowing the plaintiffs to pursue that claim on a collective basis.

"I think it's an excellent ruling," Stern said. "We believe that the company has put pressure on managers to fabricate 30-minute lunch breaks."

An attorney for Pilot declined to comment.

The plaintiffs are represented by Michael L. Russell of Gilbert Russell McWherter Scott Bobbitt PLC and Keith M. Stern of Shavitz Law Group PA.

Pilot is represented by Jenna M. Bedsole, Whitney M. Harmon and Zachary B. Busey of Baker Donelson Bearman Caldwell & Berkowitz PC.

The case is Taylor v. Pilot Corp. et al., case number 2:14-cv-02294, in the U.S. District Court for the Western District of Tennessee.

--Editing by Katherine Rautenberg.

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